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# THE EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT OF 1986

## QUESTIONS AND ANSWERS

JUNE 1, 1989

*Prepared by the Emergency Planning and Community Right-to-Know Information Hotline. For more information call 1-800-535-0202 (or (202) 479-2449 in the Washington, DC metro area).*

The Emergency Planning and Community Right-to-Know Act of 1986
Questions and Answers

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## TITLE III: GENERAL

**1. What is the relationship between EPA's voluntary, non-regulatory Chemical Emergency Preparedness Program (CEPP) and Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA)?**

In June 1985, the Administrator of EPA announced a comprehensive strategy for dealing with air toxics in the environment. As part of that strategy, EPA issued the CEPP interim guidance in December 1985. CEPP was developed to increase State and local community awareness of hazardous substances and to develop State and local emergency response plans and capabilities for dealing with chemical emergencies. A list of 366 extremely hazardous substances was included in the CEPP interim guidance as a focus for preparedness activities.

On October 17, 1986, the Superfund Amendments and Reauthorization Act (SARA) was signed into law. A major SARA provision is Title III: "Emergency Planning and Community Right-to-Know Act of 1986." Title III establishes requirements for Federal, State, and local governments as well as industry regarding emergency planning and "Community Right-to Know" reporting on hazardous chemicals. The emergency planning provisions of Title III require each State to establish a State emergency response commission, emergency planning districts, and a local emergency planning committee for each district. The state commission and local committees are responsible for preparing and implementing emergency plans as well as receiving and disseminating copies of material safety data sheets (MSDS), chemical inventory/release forms, toxic chemical release forms, follow-up written notices (Section 304), and emergency response plans.

EPA views Title III as the legislative embodiment of CEPP with several key additions. Title III builds upon EPA's CEPP and numerous State and local programs aimed at helping communities to meet their responsibilities regarding potential chemical emergencies by adding new, federally mandated concepts: a planning structure for the public sector (State commissions, planning districts, local committees) and reporting requirements for the private sector to help keep the community informed of potential chemical hazards. Title III also has provisions for training grants, a study of emergency systems, an emissions inventory, enforcement, civil suits, and trade secrets.

The general planning portions of the CEPP interim guidance (Chapters 1,2,4,5) have been incorporated into the *Hazardous Materials Emergency Planning Guide* developed by the National Response Team (NRT). This guide, published in March 1987, met the Title III requirement for the NRT to publish guidance on the preparation of emergency plans by March 17, 1987. The specific technical aspects of the CEPP interim guidance (site specific information and criteria included in

Chapters 3 and 6) were issued in December 1987 in the *Technical Guidance for Hazards Analysis* as a supplement to the NRT guide.

**2. How are States expected to form their State emergency response commission (SERC) as required under Title III?**

States are required to establish a State emergency response commission (SERC) under Title III. The SERC may consist of existing emergency response organizations or may be an entirely new mechanism to address this requirement. A SERC is responsible for designating emergency planning districts within the State and appointing, supervising, and coordinating a local emergency planning committee for each district. Where appropriate, existing political subdivisions or multi-jurisdictional planning organizations may be designated as the districts and committees.

EPA believes it is important that these SERCs include representation from more than one State agency. Many State commissions agree and have included agencies dealing with environmental protection, emergency management, public health, occupational safety and health, labor, transportation, the attorney general's office, and commerce department, as well as other appropriate public and private sector interests. Each of these agencies have expertise to bring to an emergency response commission. In addition, EPA's regional offices are available to assist States in establishing and implementing required planning structures.

Expertise in chemicals, process safety, and the hazards posed by chemicals make State environmental protection agencies vital to the SERCs. State emergency management agencies' knowledge of emergency planning and preparedness is also needed in order to make a State commission an effective tool for emergency planning at the local level. Public health agencies can provide the knowledge of potential consequences to human health, including worker safety, while the transportation agency should be involved due to the prevalence of transportation incidents involving hazardous materials. Working together, these agencies can help the State better meet its responsibilities under Title III. Of course, a governor may wish to choose one of these agencies to serve as the lead agency for the Commission. Some States have established such an organization; other States have enlisted the assistance of industry and transportation officials in such multi-agency/organization forums. The more expertise in a State commission, the better that commission will be able to meet the Title III requirements and assist communities in meeting their responsibilities to their citizens.

A December 1986 letter from the National Governors' Association to all governors summarizes the Title III requirements and requests the designation of a contact person in each governor's office to receive further information on what other

States and EPA are doing to implement Title III. The letter also mentions the existence of a State Chemical Emergency Preparedness Program contact and a State representative to the Regional Response Team. The need to coordinate with these individuals in the development of the State commission was strongly emphasized.

**3. Must the States notify EPA when they have established the State emergency response commissions and local emergency planning committees? Will EPA publish this information in the Federal Register or disseminate it in some way so that all affected parties may have access to it?**

Although states are not required to notify EPA of the establishment of State emergency response commissions and local emergency planning committees, the Agency strongly encourages States to do so. In addition, EPA encourages States to notify the public, especially potentially affected facilities. Interested parties may contact their Governor's office for information on their State commission, or call the Emergency Planning and Community Right-to-Know Information Hotline at 1-800-535-0202. EPA Regional Administrators have written to the governors of each State and Territory to inform them of the Title III requirements, to offer information and technical assistance in the development of State and local planning structures, and to request that they notify EPA of the establishment of the State emergency response commission.

**4. Title III requires each local emergency planning committee to prepare an emergency plan by October 17, 1988 and update them annually. What federal resources will be available to State and local governments to prepare and update these plans?**

Recognizing that emergency planning is primarily a State and local responsibility, Congress did not explicitly authorize Federal funds for implementation of Title III requirements. However, Section 305(a) of Title III does authorize $5 million a year for the Federal Emergency Management Agency (FEMA) to make grants to support State/local- and university-sponsored programs for training-related activities associated with hazardous chemicals. These funds were available in FY 87-88. In the absence of explicit grant making authority for emergency planning activities, the Federal government will continue to provide technical assistance and guidance as well as training to support state and local emergency planning.

EPA, along with other members of the National Response Team, has developed the *Hazardous Materials Emergency Planning Guide*, which was published in March 1987. This was supplemented in December of 1987 with the *Technical Guidance for Hazard Analysis* of extremely hazardous substances. In addition, chemical profiles on each extremely hazardous substance are available to each State emergency response commission.

EPA, FEMA, the States, the Chemical Manufacturers Association (CMA), other industry and trade assocations, and public interest groups developed a booklet,

*It's Not Over in October*, in September 1988. This booklet offers sugestions to local emergency planning committees to help them implement Title III.

EPA will also continue to provide technical assistance and training to States and local communities through its regional offices and the Environmental Response Team (ERT) in Edison, New Jersey. ERT, in addition to its ongoing training courses, is developing two additional training modules focusing on extremely hazardous substances. EPA and FEMA have developed a hazardous materials contingency planning course with train-the-trainer delivery for states. EPA is developing a module on the National Contingency Plan, the hazardous materials response system, and the extremely hazardous substances for incorporation into 17 currently identified FEMA emergency preparedness and response courses. Additionally, EPA regional offices, along with other Federal agencies through the Regional Response Teams, are providing technical assistance through workshops and consultation with State and local officials upon request.

**5. What will happen if a State refuses to comply with the emergency planning provisions?**

A governor who does not designate a State emergency response commission becomes the commission by default. While the governor could choose not to fulfill any of the Title III provisions, the public could still request information that would be submitted by facilities as part of the emergency plan, material safety data sheets (MSDS), inventory forms, toxic chemical release forms, and follow-up emergency notices. In addition, Title III provides for citizens to bring suits against the State Governor or the State emergency reponse commission to force them to comply with certain Title III provisions.

**6. Section 305(a) of Title III authorizes the Federal Emergency Management Agency (FEMA) to make grants to support State and local government- and university-sponsored training programs. Specifically, what can these grants be used to fund?**

The grants will be used to expand training activities beyond the existing training base of States. All training offered under Section 305(a) funding must be in addition to training already underway.

The National Response Team has identified courses supporting Title III that warrant increased availability among State and local personnel. Each State emergency response commission will be responsible for channeling training to high hazard or priority areas and for approving training proposals within the state. EPA expects initial heavy emphasis on planning and awareness training, consistent with Title III objectives.

FEMA and EPA have developed an addendum to the Comprehensive Cooperative Agreement (CCA) which will allow States to submit requests for these funds. This addendum was sent to all States on June 24, 1987.

**7. Are emergency exercise design, development, and implementation activities eligible to be funded under Section 305(a)?**

Emergency exercises involving hazardous substances—such as tabletop, functional, and full-field exercise activities—are conducted routinely throughout the United States. Exercises which are part of specific courses or workshops such as EPA's Hazardous Materials Incident Response Operations course are covered under Section 305(a) funding. Specific exercises were not included in Section 305(a) funding for 1988.

**8. To what extent is a State required to plan if there are only a few (or no) facilities having extremely hazardous substances present in excess of threshold planning quantities, but there is significant interstate transportation of these and other hazardous substances?**

While Section 327 of Title III generally exempts the transportation of hazardous materials from coverage under most Title III reporting requirements, the law does require comprehensive emergency plans that address all hazardous materials and the potential for both fixed facility and transportation incidents (Section 303). The list of extremely hazardous substances should provide a focus and a starting point for planning. Therefore, the transportation routes and facilities with significant inventories of hazardous substances should be considered in any plan. Finally, Section 301 includes transportation officials among those representatives who must participate in local planning committees.

**9. Title III states that the Regional Response Teams (RRTs) "may" review and comment upon an emergency plan. What criteria will the RRT use for reviewing these plans?**

The National Response Team (NRT) recently published the *Hazardous Materials Emergency Planning Guide* in which Appendix D: Criteria for Assessing State and Local Preparedness contains and adaption of criteria developed by the NRT/Preparedness Committee in August 1985. These criteria may be used for assessing local emergency plans.

The NRT developed a document that contains a set of criteria which may be used by the RRT to review local plans. The document *Criteria for Review of Hazardous Materials Emergency Plans (NRT-1A)* was approved in May 1988. These criteria may be used by local emergency planning committees for preparing plans and also by the State emergency response commissions for reviewing the plans.

**10. What is the primary purpose of Section 302 notification requirements?**

Notifications indicating that a facility has one or more extremely hazardous substances in excess of the threshold planning quantity help to identify locations within the State where emergency planning activities can be initially focused. While the substances on the list do not represent the entire range of hazardous chemicals used in commerce, they have been designated as those substances which are, in the event of an accident, most likely to inflict serious injury or death

upon a single, short-term exposure. Therefore, Section 302 notifications should be useful in helping State and local governments identify those areas and facilities that represent a potential for experiencing a significant hazardous material incident.

**11. What is the purpose of the list of extremely hazardous substances in regards to the emergency planning requirements of Title III?**

The extremely hazardous substances list and its threshold planning quantities are intended to help communities focus on the substances and facilities of most immediate concern for emergency planning and response. However, while the list includes many of the chemicals which may pose an immediate hazard to a community upon release, it does not include all substances which are hazardous enough to require community emergency response planning. There are tens of thousands of compounds and mixtures in commerce in the United States, and in specific circumstances many of them could be considered toxic or otherwise dangerous. The list represents only a first step in developing effective emergency response planning efforts at the community level. Without a preliminary list of this kind, most communities would find it very difficult to identify potential chemical hazards among the many chemicals present in any community.

Similarly, threshold planning quantities are not absolute levels above which the extremely hazardous substances are dangerous and below which they pose no threat at all. Rather, the threshold planning quantities are intended to provide a "first cut" for emergency response planners in communities where these extremely hazardous substances are present. Identifying facilities where extremely hazardous substances are present in quantities greater than the threshold planning quantities will enable the community to assess the potential danger posed by these facilities.

Communities also will be able to identify other facilities posing potential chemical risks and to develop contingency plans to protect the public from releases of hazardous chemicals. Sections 311 and 312 of Title III provide a mechanism through which a community will receive material safety data sheets and other information on extremely hazardous substances, as well as many other chemicals, from many facilities which handle them. A community can then assess and initiate planning activities, if desirable, for extremely hazardous substances below the threshold planning quantity and for any other hazardous substances of concern to them.

In addition to the assistance provided by the extremely hazardous substances list and the threshold planning quantities, community emergency response planners will be further aided by the National Response Team's *Hazardous Materials Emergency Planning Guide*. A separate notice of availability of this document was published in the Federal Register on March 17, 1987 (52 FR 8360, 61) as required under Section 303 (f) of Title III. The planning guide was supplemented in December 1987 with the *Technical Guidance for Hazards Analysis* to assist local emergency planning committees in evaluating potential chemical hazards and setting priorities for sites. This technical document provides more detailed

guidance on identifying and assessing the hazards associated with the accidental release of hazardous substances on a site-specific basis. It addresses considerations such as the conditions of storage or use of the substance (e.g., conditions of temperature or pressure); its physical properties (e.g., physical state—solid, liquid, or gas); volatility; dispersibility; reactivity; location (e.g., distance to affected populations); and quantity.

EPA, FEMA, the States, CMA, other industry and trade associations, and public interest groups developed a booklet, *It's Not Over in October*, to offer suggestions to local emergency planning committees to help them implement Title III.

**12. How did EPA determine threshold planning quantities for extremely hazardous substances?**

The Agency assigned chemicals to threshold planning quantity (TPQ) categories based on an index that accounts for the toxicity and the potential of each chemical, in an accidental release, to become airborne. This approach does not give a measure of absolute risk, but provides a basis for relative measures of concern.

Under this approach, the level of concern for each chemical is used as an index of toxicity, and physical state and volatility are used to assess its ability to become airborne. The two indices are combined to produce a ranking factor. Chemicals with a low ranking factor (highest concern), based on the Agency's technical review, are assigned a threshold planning quantity of one pound. It is believed that the one pound threshold planning quantity represents a reasonable lower limit for the most extremely hazardous substances on the list. Chemicals with the highest ranking factors, indicating lower concern, were assigned a threshold planning quantity of 10,000 pounds. This ensures that any facility handling bulk quantities of any extremely hazardous substances would be required to notify the State commission. Between the limits of one pound and 10,000 pounds, chemicals were assigned to intermediate categories of 10, 100, 500 or 1,000 pounds based on order of magnitude ranges in the ranking factors. The selection of the intermediate categories was based on standard industrial container sizes between one and 10,000 pounds.

The Agency believes that limited State and local resources should be focused on those substances that could cause the greatest harm in an accidental release. The TPQs developed in this approach meet the objective such that substances that are most likely to cause serious problems (extremely toxic gases, solids likely to be readily dispersed, or highly volatile liquids) have lower TPQs than those that might be toxic but are not likely to be released to the air (non-reactive, non-powdered solids).

**13. How can a facility determine whether it has present an amount of an extremely hazardous substance (EHS) which equals or exceeds the threshold planning quantity?**

To determine whether the facility has an amount of an extremely hazardous substance which equals or exceeds the TPQ, the owner or operator must determine the total amount of an extremely hazardous substance present at a facility on May 17, 1987 or any time after that date, regardless of location, number of containers, or method of storage. This calculation must also take into account the amount of an extremely hazardous substance present in mixtures or solutions in excess of one (1) percent and should include examination of such process components as reaction vessels, piping, etc., where formation of an EHS as a by-product may take place.

**14. Will the local emergency planning committees impose significant requirements on small businesses? Will EPA clarify the information requirements in the emergency planning guidance and in the rulemaking?**

The Agency's small business analysis does not indicate that emergency planning requirements will cause a significant burden to small facilities. Small facilities are likely to use or store fewer extremely hazardous substances and handle smaller amounts, and their level of participation in the planning process will be less involved. In addition, small facilities as a class may be represented on local emergency planning committees, and their concerns will be addressed there. Participation in the planning process provides an opportunity to present concerns regarding the burden of planning and to ensure that local committee requests for information are necessary. In particular, small businesses may wish to encourage special small business representation on the local emergency planning committee and also make their concerns known through their facility coordinators.

In addition, the National Response Team's *Hazardous Materials Emergency Planning Guide* (notice of availability published on March 17, 1987, 52 FR 8360) describes the information requirements established under Title III and how this information will be useful in developing a local emergency plan.

**15. What types of facilities are exempt from Section 302 notification requirements?**

With the exception of Federal facilities, Section 302 notifications are required from owners or operators of any facility that has present at any time, starting May 17, 1987, a listed extremely hazardous substance (EHS) in any amount exceeding the threshold planning quantity (TPQ) associated with that substance.

**16. How do Section 302 notification requirements apply to transportation of an extremely hazardous substance (EHS)?**

Although Section 302 reporting requirements do not apply to the transportation of any EHS, including transportation by pipeline, or storage of EHS under active shipping papers, transportation activities within a community should be addressed in local emergency plans.

**17. Are facilities exempt from Section 302 notification requirements if they, produce, use, or store mixtures whose extremely hazardous substance component information is not available on the MSDS provided by the manufacturer?**

If the facility which produces, uses, or stores mixtures knows or reasonably should know the components of the mixture, the facility owner or operator must notify under Section 302 if the extremely hazardous substance component is more than one percent of the total weight of the mixture and equal to or more than the threshold planning quantity.

**18. Since certain chemicals at research laboratories are exempt from the definition of "hazardous chemicals" and thus possibly exempt from release notification requirements under Section 304, can this exclusion be extended to Section 302 planning requirements?**

Title III defines "hazardous chemical" under Section 311 by reference to OSHA regulations. Under Section 311(e) "any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual" is excluded from the definition of "hazardous chemical." However, because the planning requirements are not tied in any way to the definition of "hazardous chemical," the "hazardous chemical" exclusion of Section 311(e) does not extend to Section 302.

In addition, for emergency release notification purposes under Section 304, if a release of an extremely hazardous substance or CERCLA substances exceeds the reportable quantity and occurs on a facility that produces, uses, or stores a "hazardous chemical," the facility owner or operator must notify the required parties. Section 304 of Title III also states that releases of extremely hazardous substances and CERCLA substances are reportable under Section 304 only when they are released from a facility where "hazardous chemicals" are produced, used, or stored. Accordingly, the hazardous chemicals in the research laboratory are exempt from Section 304 emergency notification only if no hazardous chemicals are produced, used or stored at the facility, other than those used at the laboratory under the direct supervision of a technically qualified individual.

**19. If an extremely hazardous substance is not stored on-site but is produced in a process such as incineration, is it exempt from both threshold planning quantity calculation and release reporting if the release is covered by a Clean Air Act permit?**

If the hazardous substance is produced on-site in a process such as incineration, it is considered present at the facility and subject to Section 302 reporting requirements (starting May 17, 1987 and continuing up to the present date) provided, of course, that the amount on site exceeds the threshold planning

quantity at any one time. However, if the release is Federally permitted under Section 101 (10) of CERCLA, which includes permitted emissions into the air under the Clean Air Act, then the release need not be reported under Section 304 of Title III. The proposed rulemaking on Federally permitted releases was published in the Federal Register July 19, 1988 (53 FR 27268).

**20. Can existing State and local laws that provide substantially similar emergency planning supercede the specific provisions of Section 302 of the Federal law?**

Title III (Section 321) generally provides that nothing in Title III shall preempt or affect any State or local law. However, material safety data sheets, if required under a State or local law passed after August 1, 1985, must be identical in content and form to that required under Section 311. Accordingly, while Title III does not supercede State or local laws, EPA has no authority to waive the requirements imposed under Title III. These requirements, including the threshold planning quantities, are intended to be minimum standards.

EPA is working with States that have developed reporting forms and planning structures to determine the most efficient approaches to avoid duplication of effort with existing State or local structures, forms, and requirements.

**21. When calculating the vulnerability zone distances, how would the quantity released (QR) be handled for an extremely hazardous substance (EHS) in solution?**

If the EHS is in solution, a facility can make a rough estimate of the QR using equation (1) on page G-2 of the "Technical Guidance for Hazards Analysis." If the facility has information on the physical properties of the EHS in solution, this data can be input into equation (1) to get the QR of the EHS.

$$\text{Equation (1) } QR = \frac{60 \text{ sec/min} \times MW \times K \times A \times VP \times 929 \text{ cm}^2/\text{ft}^2}{R \times (T1 + 273) \times (760 \text{ mm Hg/atm}) \times 454 \text{ g/lb}}$$

Where:

| | | |
|---|---|---|
| QR | = | Rate of release to air (lbs/min); |
| MW | = | Molecular weight (g/g mole); |
| K | = | Gas phase mass transfer coefficient (cm/sec); |
| A | = | Surface area of spilled material ($ft^2$); |
| VP | = | Vapor pressure of material at temperature T1 (mm Hg); |
| R | = | 82.05 atm $cm^3$/g mole K; and |
| T1 | = | Temperature at which the chemical is stored ($^0C$). |

If the physical properties of the EHS in solution are not available, the QR can be estimated using the physical properties of the EHS. This would reflect the QR of the EHS in its pure form. Since the EHS is in solution, the QR would need to be multiplied by the mole fraction of the EHS in solution to accurately reflect the QR of the EHS. If the facility only has the weight fraction of the EHS in solution, the weight fraction can be used instead of the mole fraction to estimate the QR of the EHS.

**22. Does the statute allow the State to designate facilities which produce, use or store certain quantities of liquified petroleum gas, as emergency planning facilities?**

EPA considers the designation of additional facilities to be accomplished through naming individual sites or companies, or by designating certain classes of facilites as newly covered by the emergency planning provisions of the Act. The classification scheme is one which is basically left to the Governor or the State or the SERC, after public notice and opportunity for comment.

Designating facilities under Section 302(b)(2), even by targeting the facilities by the chemicals which they use or store does not have the effect of expanding the list of extremely hazardous substances (EHSs). Designating facilities under this provision only has the effect of subjecting these facilities to the emergency planning provisions of Subtitle A. Therefore, these facilities would not be subject to release reporting under Section 304, unless they also had listed chemicals, nor reporting at the lower of the threshold planning quantity or 500 pounds, under Section 311 and 312, because no substances have been added to the EHS list.

**23. Who must be notified when a release occurs?**

In the event that a listed CERCLA hazardous substance or extremely hazardous substance is released in an amount equal to, or exceeding the reportable quantity (RQ) for that substance, the following parties must be notified:

- State emergency response commission (effective May 23, 1987);
- Community emergency coordinator for the local emergency planning committee (effective August 17, 1987, or as soon as the local committee is established).

These notifications procedures are designed to provide for more timely notification to State and local authorities. In addition, the owner/operator of a facility is still required to notify the National Response Center (800/424-8802 or in DC 202/267-2675) when a release of a CERCLA hazardous substance (in excess of an RQ) takes place.

**24. What chemicals are subject to reporting?**

Chemicals subject to Section 304 notification requirements are CERCLA hazardous substances listed under 40 CFR Table 302.4, and the extremely hazardous substances listed under 40 CFR 355 Appendix A and B. At present, the CERCLA list contains 719 chemicals or waste streams, 134 of which are also extremely hazardous substances. For the remaining 232 extremely hazardous substances not currently on the CERCLA list, their reportable quantity (RQ) is tentatively set at one pound until adjusted by rulemaking.

For a reportable quantity (RQ) release of one of the 232 extremely hazardous substances, the appropriate State and local agencies must be notified. The proposed rulemaking for adding these 232 chemicals to the CERCLA hazardous substance list was published on January 23, 1989 (54 FR 3388). When they become CERCLA hazardous substances, notification to the NRC will also be necessary.

**25. Must any amount of a listed chemical contained within abandoned or discarded barrels, containers, or other receptacles be considered, if a specific reportable quantity has been exceeded under the Section 304 notification requirements?**

Section 355.20 (52 FR 13395) defines a release as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching,

dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other receptacles) (emphasis added) of any hazardous chemical, extremely hazardous substance, or CERCLA hazardous substance." Therefore, if a facility has abandoned or discarded any barrels, containers, or other receptacles containing an extremely hazardous substance or a CERCLA hazardous substance and the total amount present in all of the receptacles is in excess of its designated reportable quantity and the containers have the potential to result in exposure to persons off site, the discarding or abandonment of the barrels should be reported as required in Section 355.40 (52 FR 13396).

**26. What if the State commission and/or local committees must be notified of a release but have not yet been established?**

States were required to establish their commissions by April 17, 1987, and those commissions were to establish local committees not later than 30 days after the designation of emergency planning districts or by August 17, 1987, whichever is earlier.

Section 301 of Title III provides that if the State commission is not set up by April 17, 1987, the Governor must operate as the State commission, and thus notification must be made even if no commission is established. However, EPA has been informed that all States have established an emergency response commission. Local committees are required to be established not later than 30 days after the designation of emergency planning districts or by August 17, 1987, whichever is earlier. If local committees are not set up by August 17th, EPA encourages facilities to provide notifications to local emergency personnel such as local emergency management offices or fire departments. Local and State governments may make arrangements necessary for the receipt of the release information when local committees are not yet established.

**27. How is an off-site release determined to be subject to Section 304 notification requirements?**

A release need not result in actual exposure to persons off-site in order to be subject to release reporting requirements; potential exposure is sufficient. Any release into the environment above the reportable quantity may have the potential to result in exposure to persons off-site and therefore should be reported under Section 304 notification.

**28. Do the CERCLA and Title III telephone notifications include the same basic information, such as whether the incident is still ongoing, abatement actions by whatever entities, cause of the accident, injuries caused by the incident if known, amount spilled, etc.?**

The Agency does not believe that the notification specified in Section 304 should vary from the CERCLA notification in any significant way.

**29. Should the written follow-up information go not only to the local emergency planning committee and the State commission but also to the State environmental agency?**

Section 304(c) of Title III mandates that written follow-up notification go to the same entities that received the initial oral notification, i.e., the State commission and the local emergency coordinator of the local emergency planning committee. Title III does not require that written follow-up information be given to the State environmental agency. However, written follow-up reports are available to the state agency as to any other member of the public under Section 324. In most cases, environmental agencies are represented on the commission and thus may receive the information directly.

**30. Should the location and cause of an incident be included in the written follow-up report?**

To be consistent with CERCLA, EPA believes that the location of the releases is always essential for both emergency response and follow-up actions and should be identified in any release notification under Section 304. The cause of the accident should always be included in the follow-up report to provide information for local, State, and Federal officials for preparedness and prevention purposes.

**31. Should the written notification also include results of a facility's inspection? An inspection may specify measures to be applied to prevent future releases.**

While this information is certainly useful in terms of preventing similar releases, it is not required. However, State and local governments may wish to require such information as part of their notification programs. EPA has begun an initiative to focus corporate attention on releases. It is called the Accidental Release Information Program. Under this program, a facility who has more than a specific number of releases of a certain hazardous substance, or releases in certain quantities above the reportable quantity, must report in writing to EPA the cause of the accident, prevention practices in place, and the specific steps that are being taken to prevent recurrence of the release.

**32. The follow-up emergency notice requires the owner or operator of a facility that has released a reportable quantity of a substance requiring Section 304 notification to relate, in a follow-up notice, "any known or anticipated acute or chronic health risks associated with the release." Since general health information is already given on a material safety data sheet (MSDS) for the chemical, will an indication that "severe adverse health effects may be expected" suffice for this requirement?**

No. The health information contained in an MSDS is not specific enough to be of use to health professionals, especially if the chemical name is confidential on the MSDS. However if the MSDS does contain specific information, it <u>should</u> be reported in the follow-up emergency notice.

**33. Must a follow-up emergency notice be given for a release of a CERCLA hazardous substance which is not an extremely hazardous substance and for which a reportable quantity has not been established under Section 102(a) of CERCLA?**

In lieu of the emergency release notification required under Section 304(b), Section 304(a)(3)(B) provides that owners and operators of facilities that produce, use or store a hazardous chemical and from which is released a CERCLA hazardous substance that is not an extremely hazardous substance and for which a reportable quantity has not been established under Section 102(a) of CERCLA, shall provide the same notice to the local emergency planning committee as is provided to the National Response Center under Section 103(a) of CERCLA. Although Section 304(b) notice is not required, the facility owner or operator must still provide follow-up emergency notification under Section 304(c). Section 304(c) states that, "As soon as practicable after a release which requires notice under subsection (a), such owner or operator shall provide a written follow-up emergency notice...setting forth and updating the information required under subsection (b), and including additional information...". Notification of the above-described release is required under subsection (a), thus written follow-up emergency notice is required. Follow-up notification of these releases must be reported in the manner prescribed by Section 304(b).

**34. What facilities are exempt from Section 304 notification requirements?**

A facility itself can only be exempted if there are no hazardous chemicals present at the facility. The term "hazardous chemical," as defined under Section 311 of Title III, includes any substance which constitutes a physical or health hazard. This broad definition is borrowed from the Occupational Safety and Health Act (OSHA) Hazard Communication Standard, but there are certain exemptions specified in Section 311. However, there is no single classification or type of business (e.g. manufacturers) that are not subject to Section 304 reporting requirements. Therefore, it is probable that few, if any, facilities will actually have no hazardous chemicals and thus be exempt from Section 304 notification requirements.

**35. Are there exemptions to Section 304 reporting requirements?**

The statute provides several exemptions from notification. They are:

(a) "federally permitted releases" as defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 Section 101(10);

(b) releases which result in exposure only to persons solely within the facility boundaries;

(c) releases from a facility which produces, uses, or stores no hazardous chemicals;

(d) "continuous releases" as defined under CERCLA Section 103(e) except for initital reporting of the release and statistically significant releases;

(e) application of a Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) registered pesticide, as defined under CERCLA Section 103(e) in accordance with its intended purpose;

(f) emissions from engine exhaust of a motor vehicle, rolling stock, aircraft, or pipeline pumping station;

(g) normal application of fertilizer; and

(h) release of source, byproduct, or special nuclear material from a nuclear incident at a facility subject to requirements of the Price-Anderson Act (i.e. nuclear power plants).

It should be noted, however, that some releases occurring at a facility which are not reportable under Section 304 may still be reportable releases under CERCLA 103 and, if so, must be reported to the National Response Center. Release reporting under Section 304 is in addition to release notification under CERCLA Section 103. Thus, notice to the National Response Center may be required even if no local or State reporting is required.

**36. How are "continuous" and "federally permitted" releases interpreted?**

Certain conditions must be examined in order to determine whether a release meets the definition of "federally permitted" or "continuous" releases and therefore, may not be required to be reported under Section 304. Section 101(10) of CERCLA defines "federally permitted releases" for purposes of Section 103 of CERCLA and release notification under Title III and includes 11 types of specific releases permitted under certain State and Federal programs. As EPA issues clarifications of "federally permitted release" under Section 103 of CERCLA, these clarifications will apply equally to release notifications under Section 304 of Title III. The proposed rulemaking on "federally permitted releases" was published on July 19, 1988 (53 FR 27268).

Under the provisions of Section 103 of CERCLA, the release must be continuous and predictable with respect to quantity and time in order to be exempt from Section 304 reporting requirements. In the interim, EPA is available to help clarify these definitions as they apply to specific circumstances in order to ensure compliance with the intent of these reporting requirements. "Continuous" releases must be reported annually under CERCLA Section 103, but do not have to be reported under Section 304 of Title III. The proposed rulemaking on "continuous" releases was published April 19, 1988 (53 FR 12868).

**37. Does the "federally permitted release" exemption apply fully to State-permitted releases?**

No. State permitted releases are exempted only to the extent that the releases are considered "federally permitted" under Section 101(10) of CERCLA.

**38. Are releases above the amount qualifying as a "continuous releases" exempt from Section 304 notification requirements?**

Because "statistically significant increases" from a "continuous release" must be reported as an episodic release under CERCLA Section 103(a), such release must also be reported under Section 304 of Title III. Any clarifications or regulations interpreting "continuous releases" or "statistically significant increases" under CERCLA Section 103(f) will also apply to Section 304 of Title III.

**39. If disposal of hazardous waste or solid waste is performed according to the permitting and other relevant requirements of the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), or other applicable Federal or State laws, is it subject to emergency release notification?**

EPA is currently considering whether TSCA-regulated disposal sites should be subject to CERCLA notification. Regardless of the outcome of that decision, it is important to note that spills and accidents occurring during disposal and outside of the approved operation, and resulting in reportable releases of extremely hazardous substances or CERCLA hazardous substances, must be reported to the State emergency response commission and local emergency planning committee as well as to the National Response Center. In addition, PCB releases of a reportable quantity or more from a TSCA-approved facility (as opposed to disposal into such a facility), must be reported under Section 304 and to the National Response Center.

The RCRA disposal issue is similar to PCB disposal under TSCA. In a final rule issued in April 1985, EPA determined that where the disposal of wastes into permitted or interim status facilities is properly documented through the RCRA manifest system and RCRA regulations are followed, notification under CERCLA does not provide a significant additional benefit as long as the facility is in substantial compliance with all applicable regulations and permit conditions. However, spills and accidents occurring during disposal that result in releases of reportable quantities of hazardous substances must be reported to the National Response Center under CERCLA Section 103 (50 FR 13461; April 4, 1985). EPA believes that the same rationale applies to Section 304. However, no notification of proper disposal into RCRA facilities is required.

**40. Are mining and mineral extraction wastes exempt under Section 304?**

No. The release notification requirements apply if the wastes are CERCLA hazardous substances or extremely hazardous substances.

**41. Does the CERCLA "petroleum exclusion" apply to release reporting under Section 304 of Title III, since "petroleum including crude oil or any fraction thereof" is exempt from reporting under Section 103 of CERCLA?**

No. "Petroleum" is exempted generally from CERCLA responsibilities since it is excluded from the definition of a "hazardous substance" under Section 101(14) and "pollutant or contaminant" under Section 101(33) of CERCLA. Because no such exclusion exists under Title III, if extremely hazardous substances are present in petroleum, those substances are subject to applicable emergency planning and release notification requirements under Title III.

**42. Can the "de minimis" concept used in determining the threshold planning quantities in mixtures be applied in the determination of the reportable quantity for emergency release notification?**

No. The "de minimis" quantity was set in place for threshold planning quantities simply to make the calculation of the total amount of extremely hazardous substances on a facility more straightforward for planning purposes. The de minimus concept does not apply to Section 304 release reporting, however, because the extremely hazardous substance is already in the environment potentially doing harm. Facilities should follow the "mixture rule" for reporting releases under Section 304. This rule has some relevance in reporting small quantities of hazardous substances. See the April 4, 1985 RQ rule (50 FR 13463).

**43. How are transportation-related releases covered under Section 304?**

Section 304 covers all releases of listed hazardous or extremely hazardous substances, including those involved in transportation in excess of the reportable quantity (RQ). Owners or operators of transportation facilities may call 911 or the local telephone operator, in order to satisfy Section 304 notification requirements when a transportation-related release occurs. Local emergency planning committees should work with the local 911 system and telephone operators to ensure such transportation release notifications are immediately relayed to the community emergency coordinator.

**44. What is the responsibility of transportation owners or operators in the event of a spill or release of extremely hazardous substances or CERCLA hazardous substances?**

Although owners or operators of facilities in transportation or those that store substances under active shipping papers are not required to notify State and local authorities with regard to Section 302 emergency planning, they are required to report releases under Section 304.

With regard to stationary facilities, Section 304 requires owners and operators to report releases to the local emergency planning committee and to the State emergency response commission. Owners and operators of facilities in transportation under Section 304 are allowed to call the 911 emergency number or in the absence of a 911 number, the operator, in lieu of calling the State

commission and local committee. The rationale for this separate reporting is that transportation operators on the road most likely will not know the telephone numbers of all relevant State and local entities on their routes. If the transportation operator is in a community which has a generic emergency number rather than 911, the generic number should be used. If the release is of a CERCLA hazardous substance, a call to the National Response Center is also required. Local committees should consider training all personnel responsible for receiving telephone notice of such a release, so that proper notification procedures will be maintained.

**45. How does EPA define a "transportation-related release?"**

EPA defines a "transportation-related release" to mean a release during transportation, or storage incident to transportation if the stored substance is moving under active shipping papers and has not reached the ultimate consignee.

**46. In the case of transportation-related releases, should the emergency release notification requirements apply to the owner or the operator of the facility?**

Either the owner or operator may give notice after a release. Owners and operators may make private arrangements concerning which party is to provide release notification. However, under Section 304 both owner and operator are responsible if no notification is provided.

**47. Do the Section 304 release notification requirements apply to pipelines, barges, and other vessels as well as to other transportation facilities?**

Title III (Section 327) does not apply to the transportation of any substance or chemical, including transportation by pipeline, except as provided in Section 304. Section 304 requires notification from facilities of releases of extremely hazardous substances and CERCLA hazardous substances. Section 327 exempts only hazardous substances from reporting and does not otherwise exempt the facility from Title III. The word "facility" is defined in Section 329 to mean stationary items, which would include pipelines. The definition also includes, for purposes of Section 304, motor vehicles, rolling stock, and aircraft. Because barges and other vessels are not included in the definition of "facility," they are not subject to Section 304 reporting requirements.

**48. When and where should an air carrier report a release? For instance, should the release be reported to the State where the release occurred or to the airport of destination?**

Since aircraft should have radio communication capabilities, the report should be given to the State(s) likely to be affected by the release as soon as possible after the release. Reporting at the destination will not necessarily enable the provision of timely response to the affected areas.

**49. What are the differences in the various requirements for release notification under Section 103 of CERCLA and Section 304 of Title III?**

Under Section 103 of CERCLA, a release of a hazardous substance in an amount equal to or in excess of its reportable quantity (RQ) which is not otherwise exempted under CERCLA must be reported to the National Response Center. Section 304 of Title III provides a similar reporting requirement for releases of extremely hazardous substances, as defined under Section 302, as well as releases which require notification under CERCLA Section 103. However, reporting under Section 304 must be given by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee and to the State emergency response commission, as well as to the National Response Center for CERCLA hazardous substances. Releases from transportation incidents are also subject to the Section 304 reporting requirements.

A proposed rulemaking was published on January 23, 1989 (54 FR 3388) to designate under Section 102 of CERCLA all extremely hazardous substances which are not already defined as "hazardous substances" under Section 101(14) of CERCLA. The designation will include all 232 extremely hazardous substances that are not presently "hazardous substances" under CERCLA. At that time, any substance requiring local and State release reporting under Section 304 of Title III will also require reporting to the National Response Center under CERCLA Section 103. In addition, the extremely hazardous substances will continue to trigger contingency planning requirements in addition to release reporting.

With regard to the contents of the required notification under SARA Section 304 and CERCLA Section 103, the required contents of Section 304 emergency notification are set out in Section 355.40. Although Section 103(a) of CERCLA does not specify the contents of release notification,the information necessary under Section 103(a) for potential federal response (e.g., type of substance and nature, location, and effects of the release) should not differ for any practical purpose from the content of the notice specified under Section 304.

Section 304 also requires follow-up written emergency notice to the State emergency response commissions and the local emergency planning committees that received the initial verbal notification. This reporting is not required to be sent to the NRC.

**50. What is the relationship between RQs and TPQs?**

The reportable quantity that triggers emergency release notification (Section 304) was developed as a quantity that when released poses potential threat to human health and the environment. The threshold planning quantities for emergency planning provisions (Section 302) were designed to help States and local communities focus their planning efforts. The TPQ is based on those quantities of substances that can cause the significant harm should an accidental release occur. The Agency has taken several steps to make the TPQs and the RQs consistent.

The Agency is reviewing RQ and TPQ methodologies and will be proposing a rule in the near future which will address these inconsistencies for all CERCLA hazardous substances which meet the criteria for extremely hazardous substances. This rulemaking will eliminate this concern.

**51. Company A owns a facility which manufactures crude oil. They sell the crude oil to Company B, where it is kept in tanks on Company A's facility, but leased to Company B. Who is subject to reporting under Sections 304 and 313?**

Since the tanks are part of Company A's facility and Company A is the owner and/or operator of the facility, Company A would be subject to Section 304 release notification and Section 313 reporting requirements for any release from the tanks, which may contain either Section 302 (EHS) listed substances, CERCLA hazardous substances and/or Section 313 listed chemicals above the applicable reporting thresholds. Company A would also be held liable if the reports were not made.

Because Company B leases the tanks, Company B would probably qualify as an operator and also be responsible for reporting the substances under relevant provisions of Title III.

## LIABILITY UNDER TITLE III

**52. Can individuals, as members of a State emergency response commission or a local emergency planning committee, be sued and/or be held liable for their commission's or committee's failure to fulfill its Title III requirements?**

Under Section 326, an individual may assert a Federal cause of action against a State emergency response commission in Federal court for the commission's failure to fulfill certain obligations under the Act. Section 326 authorizes only injunctive relief against a State commission, i.e., if successful, the citizen may compel the State commission to fulfill the Title III obligations listed under Section 326, but may not receive money damages for the State's failure to do so. The Act does not create a Federal cause of action for citizens who wish to sue individuals as members of these State commissions or local committee. Thus, whether an individual can be liable as a member of a State commission is a question of the law of each particular State.

In most states, this issue has been addressed by legislation or a ruling of the Attorney General. Also, EPA will shortly publish a summary of Tort Liability issues.

**53. What are the liabilities of members of a State emergency response commission and a local emergency planning committee, if an incident is not handled properly despite following procedures developed and reviewed by those commission and committee members? Can the individual members be sued and held liable?**

The general rule is that persons who serve on government committees have no liability for their actions except for gross negligence. According to EPA's Office of General Counsel, however, this issue varies from state to state. Those who wish to know the answer to this question must check with their individual State Attorney General's offices with regard to liability when serving on State emergency response commissions and local emergency planning committees.

**54. For Section 302 purposes, if a contractor brings an extremely hazardous substance (EHS) on-site to a facility over the threshold planning quantity is the owner/operator of the facility, or is the contractor required to make the notification to the LEPC?**

**Also for Section 304 purposes, if a contractor bursts a tank at a facility and causes a release of a reportable quantity (RQ) of an EHS, should the contractor or the owner/operator of the facility notify the community emergency coordinator?**

Under both Sections 302 and 304, a contractor could be considered an operator of the facility or a portion of the facility depending on if he/she has enough authority

over the facility or a portion of the facility. Operator is not defined by the statute or in the regulations.

If the contractor is considered an "operator," he or she could be held liable for not making the required notification under Sections 302 and 304 if no notification is made by the owner or another operator of the facility.

**55. What are the requirements of Section 311 and what facilities are covered? Are there thresholds for reporting?**

Section 311 requires that the owner or operator of a facility must submit a material safety data sheet (MSDS) for each hazardous chemical which meets or exceeds a specified threshold quantity at the facility, to the State emergency response commission, the local emergency planning committee, and the local fire department with jurisdiction over the facility. A list of MSDS chemicals may be submitted instead of an MSDS for each chemical.

Section 311 applies to any facility required under the Occupational Safety and Health Act to prepare or have available an MSDS for a hazardous chemical. At present, this requirement to prepare or have available MSDSs applies to all facilities. As of September 24, 1988, non-manufacturing facilities also must comply with the requirement and by April 30, 1989, the construction industry must comply with this section.

In a regulation published on October 15, 1987, EPA established a threshold below which facilities do not need to report. By October 17, 1987, MSDS, or a list of MSDS chemicals must be submitted on all hazardous chemicals present at a covered manufacturing facility in quantities that equal or exceed 10,000 pounds. EPA has designated a different and lower reporting threshold for extremely hazardous substances. The reporting threshold is 500 pounds or the threshold planning quantity, whichever is less.

Because EPA has yet to establish a permanent threshold level effective the third year of reporting, MSDSs or a list of MSDS chemicals must be submitted by October 17, 1989 (or two years and three months after the manufacturing facility first becomes subject to these requirements), for all hazardous chemicals present in quantities between zero and 10,000 pounds for which an MSDS has not been submitted. However, EPA intends to revise the permanent threshold (effective the third year) such that the threshold will not be as low as zero pounds. That threshold will be established based on a study of first year reporting and public comments. Revised MSDSs must be provided to the local emergency planning committee, the State emergency response commission, and the local fire department within three months after discovery of significant new information concerning the hazardous chemical.

**56. How does the Occupational Safety and Health Administration (OSHA) expansion of the Hazard Communication Standard affect Section 311?**

Section 311 of Title III applies to any facility covered by the OSHA Hazard Communication Standard (HCS). On August 24, 1987, OSHA published a rule expanding the coverage of HCS, which had previously been limited to the manufacturing sector, to non-manufacturing facilities except for the construction industry, SIC 15-17. The effective date of this expansion was June 24, 1988. Three months after this effective date (September 24, 1988), these facilities were required to comply with Section 311. The phase-in rule for the non-manufacturing facilities would follow this schedule:

- September 24, 1988—for facilities having any quantity at or above 10,000 pounds for hazardous chemicals and 500 pounds or the threshold planning quantity, whichever is lower, for extremely hazardous substances;

- September 24, 1990—for facilities having any quantity above zero pounds for both hazardous chemical and extremely hazardous substances, threshold level to be published by EPA.

The final thresholds for the third year of reporting are under review to determine the appropriate amounts.

**57. How is the construction industry covered by Sections 311 and 312?**

The February 15, 1989 Federal Register (54 FR 6886), stated that the HCS has been in effect for the construction industry since January 30, 1989. EPA published in the March 13, 1989 Federal Register (54 FR 10325 ), a clarification of the Section 311/312 deadlines for construction industry. The initial submission of MSDSs or alternative list is due by April 30, 1989. The initial submission of the Tier I or Tier II is March 1, 1990.

**58. Is the Section 311 requirement an annual or a one-time reporting requirement?**

Section 311 is not an annual reporting requirement. EPA has designed a three year "phase-in" schedule to balance the public's right to know with the potentially overwhelming flood of information to State and local governments. All hazardous chemicals present in quantities above the established threshold must have been submitted on or before October 17, 1987. EPA will also establish a third year threshold reporting on or before October 17, 1989, which will also constitute the permanent threshold for Section 311 reporting.

Updates are due within three months after the discovery of significant new information or when a new hazardous chemical becomes present at the facility above established levels. Following this system, each hazardous chemical is only reported once, but the reporting of the chemicals could fall at two different times.

**59. Were the reporting thresholds for those facilities covered by the OSHA expansion (those facilities required to comply with Section 311 in September 1988) the same as those for the October 17, 1987, requirement?**

Yes. Based on information currently available, EPA believes that the threshold that applies to the manufacturing sector currently subject to Sections 311 and 312 apply to the non-manufacturing facilities. However, concerns were raised over the need to provide separate thresholds for the facilities subject to these requirements as a result of OSHA's expanded MSDS requirements. As a result, EPA undertook a more detailed analysis of the universe newly covered by the OSHA MSDS requirements, including a more detailed analysis of small business impacts and the need for separate thresholds for such facilities. Based on that analysis, EPA will maintain the same reporting thresholds for the non-manufacturing facilities.

**60. How would a facility report a hazardous chemical that they acquired above the reporting threshold after the October 17, 1987, deadline for Section 311?**

An update must be submitted within three months anytime there is discovery of significant new information, or if an unreported hazardous chemical is present in a quantity exceeding the reporting thresholds. This update can be the MSDS for the new hazardous chemical, an updated list of hazardous chemicals or an addendum to the original MSDS list submitted.

**61. What is required if a list is submitted instead of the actual material safety data sheets (MSDS) under Section 311?**

Instead of submitting an MSDS for each hazardous chemical, the owner or operator may submit a list of the hazardous chemicals for which the MSDS is required. This list must identify the hazard categories (acute health hazard, fire hazard, reactive hazard, chronic health hazard, and sudden release of pressure hazard) associated with each chemical and must include the chemical or common name of each hazardous chemical as provided on the MSDS.

**62. Why does EPA recommend submitting a list rather than Material Safety Data Sheets (MSDS) to meet the requirements of Section 311?**

Lists will minimize the paperwork burden for State and local governments and local fire departments. In addition, the list can be used as an index to inventory forms required under Section 312, since the information on both forms is grouped in terms of hazard categories. Local government officials and fire departments can request individual MSDSs for hazardous chemicals if it is a priority for their community.

**63. If a facility submits a list to comply with Section 311, does the facility have to supply a revised MSDS with significant new information or a new MSDS for substances that become present on-site after the initial reporting deadline and exceed the threshold within three months as required by Section 311(d)?**

If a facility has submitted only a list of hazardous chemicals, rather than the actual MSDS, the facility does not need to file a revised MSDS for any hazardous chemical upon discovery of new information. However, a facility must submit a revised list of any addition to the list if the new information about that chemical changes the hazard category under which it falls or the facility acquires a new substance above the threshold level that was not included on the initial list.

**64. Where should citizens go to request MSDSs on chemicals in a facility within their community?**

Each submitted MSDS or list along with the community emergency response plan, and inventory form are to be made available to the public at a designated location during normal working hours. Each local emergency planning committee (LEPC) must publish annually a notice in local newspapers that the above forms have been submitted and are open to public viewing at the designated location. In addition, any person may obtain an MSDS by submitting a written request to the LEPC. If the local committee does not have the MSDS, the local emergency planning committee is required to request it from the owner or operator of the facility. If requested through the LEPC, MSDSs can be obtained for hazardous chemicals present at a facility in amounts below the threshold.

**65. Is the submission of a Tier II form an acceptable method of reporting a list of hazardous chemicals grouped by hazard category under Section 311 of Title III?**

Section 311 of Title III requires facilities to submit copies of Material Safety Data Sheets (MSDS) or a list of hazardous chemicals grouped by hazard category for those chemicals present above an applicable threshold. The language "grouped by hazard category" in the regulations means that the facility needs to submit a list of hazardous chemicals with each of the hazard categories identified. Since the Tier II form would certainly contain at least as much information as a list of hazardous chemicals grouped by hazard category, it would be an acceptable submission for a list of MSDS chemicals under Section 311.

Facility owners/operators believe that this submission of a Tier II would satisfy the Section 312 requirements, and therefore not submit a Tier II before March 1 of the following year. This belief is in error. Section 312 requires that a Tier II form, if requested, be submitted between January 1 and March 1 of the following year. Submission at this time is required in order for the facility to verify that the information is correct for the entire calendar year.

**66. A petroleum company owns many oil wells on a large oil field. Each well is on its own plot of land. These plots of land are not adjacent or contiguous and the oil field itself spans many local planning districts. For purposes of Sections 311 and 312 reporting, is each oil well a separate facility and must separate reports be filed for each oil well?**

The definition of facility for Sections 311 and 312 includes "all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites that are owned or operated by the same person" (52 FR 38364). Therefore, unless the well properties are adjacent or contiguous, each well is a separate facility. The Title III definition of facility applies to the land surface only; the fact that one oil company may own the subsurface rights of an entire oil field does not make the field one "facility."

Under Sections 311 and 312, a report must be prepared for each facility owned or operated by the same person. The regulations stipulate that certain information must be provided to the specified agencies. Nowhere do the regulations stipulate a separate report for each facility. Since EPA does not stipulate a separate report for each facility, EPA does not prohibit one report being filed for similar multiple facilities, so long as the report satisfies the statutory information requirements.

Filing one report for similar multiple facilities is a kind of "generic reporting." A generic report would consist of one submission for each section—one MSDS for each reportable chemical and one Tier I/II - which would provide the required information on each well (facility). However, a generic report may only be submitted for similar facilities. In order for facilities to be considered similar, they must have present the same extremely hazardous substances and hazardous substances on-site at any one time in similar amounts. If the facilities are not similar, the generic report would not contain the facility-specific required information and the facility would not be considered in compliance with Sections 311 and 312.

When submitting a report under Sections 311 and 312, the report must be sent to the SERC, the LEPC and the fire department. In the case of a generic report being submitted, the report must be submitted to every SERC, LEPC and fire department under whose jurisdiction the similar facility crosses.

In the case of reporting for an oil field and oil wells therein, generic reporting will prove beneficial since most wells are similar on a given field. Simply make sure that the wells are in fact similar, that the generic report provides the facility-specific information required and that the report is submitted to all relevant State and local agencies. In that manner, the generic report will provide all facility-specific information to all relevant State and local agencies.

**67. The reporting under Section 312 is in two tiers, Tier I and Tier II. What are the general differences between the two forms?**

Section 312 includes a two tier approach. Tier I requires information (such as maximum amount of hazardous chemicals at the facility during the preceding year, an estimate of the average daily amount of hazardous chemicals at the facility, and the general location) be aggregated and reported by hazard categories. Tier II requires information to be reported for each individual hazardous chemical. Tier II not only requires the information mentioned above, but also requests information on specific location and storage.

Finally, Tier I is required by Federal law; Tier II is required only upon request by the local committee or State commission. However, a covered facility may submit Tier II forms instead of Tier I forms. Also, States may pass legislation requiring Tier II forms.

**68. Who is required to submit a Section 312 Tier I Form?**

The requirements of Section 312 (40 CFR 370) apply to the owner or operator of any facility that is required to prepare or have available a material safety data sheet for a hazardous chemical under the OSHA Hazard Communication Standard. Reporting thresholds have been established under this Section below which a facility does not need to report. These thresholds are:

For extremely hazardous substances:

- 500 lbs or the threshold planning quantity, whichever is lower, on March 1, 1988 and annually thereafter.

For hazardous chemicals which are not extremely hazardous substances:

- 10,000 lbs for March 1, 1988 (for calendar year 1987, or the first year reporting);
- 10,000 lbs for March 1, 1989 (for calendar year 1988, or the second year reporting);
- For March 1, 1990 (for calendar year 1989, or the third year reporting) and annually thereafter. EPA will publish the final threshold amount as soon as it is determined.

**69. Where should the Tier I form be sent and what is the deadline?**

The owner or operator subject to this reporting requirement must submit a Tier I inventory form (or the optional Tier II inventory form) for all hazardous chemicals present at the facility in excess of the established threshold to the State emergency response commission, the local emergency planning committee, and the local fire department with jurisdiction over the facility.

The deadline for submitting Tier I (or the optional Tier II) inventory forms is March 1, 1988, and annually thereafter by March 1.

**70. How should locations be identified on Tier I/Tier II forms?**

Tier I forms provide for listing the general location for all applicable chemicals in each hazard category, including the names and identifications of buildings, tank fields, lots, sheds, or other such areas.

Tier II forms provide for reporting buildings, at a minimum, and allow facilities to describe briefly the location of hazardous chemicals on the form itself or to submit site plans or site coordinates. Submitting additional information, such as site plans and site coordinate systems, may be useful on a site-by-site basis but is not necessary for every facility.

**71. When submitting a Tier II form under Section 312, a covered facility can claim the required location information confidential. How is this confidential information protected? Are there any penalties under Title III if a State or local official who receives this information fails to protect its confidentiality?**

While the location information on the Tier II form can be claimed confidential under Title III, Title III does not provide a confidentiality protection procedure for this information. Since claims of confidentiality regarding the location of chemicals in facilities are not covered by Title III trade secrecy protection, the duty to protect this information as confidential rests with State and local officials. As the Agency stated in its October 15, 1987 rule, "The confidential location information should not be sent to EPA, but only to the requesting entity. This information will be kept confidential by that entity under Section 312(d)(2)(F) which refers to Section 324 of Title III. Section 324(a) states that upon request by a facility owner or operator subject to the requirements of Section 312, the State emergency response commission and the appropriate local emergency planning committee must withhold from disclosure the location of any specific chemical required by Section 312(d)(2) to be contained in a Tier II inventory form," 52 FR 38312, 38317. Interested persons should contact their State and local government's attorneys office for information regarding procedures for protecting confidential location information.

Since protection of Tier II confidential location information is not covered under Title III, the statute itself does not provide penalties for the failure to protect such information. Penalties may, however, be provided under State and local law.

**72. How will citizens have access to Tier I or Tier II inventory forms?**

Tier I information may be obtained from State emergency response commissions or local emergency planning committees during normal working hours.

Tier II information for a specific chemical at a facility may be obtained by sending a written request to the State emergency response commission or the local emergency planning committee. If they do not have the requested Tier II information, they must obtain it from the facility. For chemicals present below 10,000 pounds, the response is discretionary by either the State emergency response commission or the local emergency planning committee and depends on the justification of need by the requestor. The facility must make the information available to the SERC or LEPC if they request it on behalf of the individual.

**73. In complying with a public request for Tier II information under Section 312, how is "need" determined?**

Guidelines for determining need to know are the responsibility of the local emergency planning committees and State emergency response commissions.

**74. OSHA expanded its Hazard Communication Standard on August 24, 1987. Does this affect Section 312 of Title III?**

Yes. OHSA has expanded the Hazard Communication Standard (HCS) to cover non-manufacturers as well as manufacturers in all Standard Industrial Classification (SIC) Codes. The effective date of the expansion of HCS for non-manufacturers is June 24, 1988. Therefore, facilities that are newly covered by this expansion will be subject to Section 312 reporting requirements on March 1, 1989 for reporting on calendar year 1988. Facilities in the construction industry which were newly covered by OSHA requirements as of January 30, 1989 will begin reporting under Section 312 on March 1, 1990 for calendar year 1989.

## HAZARD CATEGORIES
## (Sections 311 and 312)

**75. Section 311 and Section 312 group chemicals according to hazard categories. What are these categories?**

In the law, the reporting requirements for Section 311 and Section 312 are based on the 23 physical and health hazards identified under OSHA regulations. Under Sections 311 and 312, EPA was permitted to modify these categories of health and physical hazards. EPA recognized that a smaller number or reporting categories might make managing the information easier as well as increase its usefulness, particularly since information on chemicals that present more than one hazard must be provided in all applicable categories. Based on public comment, EPA modified OSHA's 23 hazard categories to the following five hazard categories:

*Immediate (acute) health hazard*, includes "highly toxic," "toxic," "irritant," "sensitizer," "corrosive," and other hazardous chemicals that cause an adverse effect to a target organ which usually occurs rapidly as a result of short term exposure.

*Delayed (chronic) health hazard*, includes "carcinogens" and other hazardous chemicals that cause an adverse effect to a target organ and the effect of which occurs as a result of long term exposure and is of long duration.

*Fire hazard*, includes "flammable," "combustible liquid," "pyrophoric," and "oxidizer."

*Sudden release of pressure hazard*, includes "explosive," and "compressed gas."

*Reactive hazard*, includes "unstable reactive," "organic peroxide," and "water reactive."

**76. How are mixtures handled for Sections 311 and 312 reporting?**

The owner or operator of a facility may meet the requirements of Sections 311 and 312 by choosing one of two options:

- Providing the required information on each component that is a hazardous chemical within the mixture. In this case, the concentration of the hazardous chemical in weight percent must be multiplied by the mass (in pounds) of the mixture to determine the quantity of the hazardous chemical in the mixture. No MSDS has to be submitted for hazardous components in a mixture with quantities in concentrations under 0.1 percent for carcinogens and 1 percent for all other hazardous components of the total weight of the mixture.

- Providing the required information on the mixture as a whole, using the total quantity of the mixture.

When the composition of a mixture is unknown, facilities should report on the mixture as a whole, using the total quantity of the mixture. Whichever option the owner or operator decides to use, the reporting of mixtures must be consistent for Sections 311 and 312, where practicable.

**77. For Section 311 reporting, how are mixtures identified if a list is submitted instead of the MSDSs?**

An owner or operator can comply with the requirements of Section 311 for a mixture of hazardous chemicals by providing the common or trade name of the mixture listed by hazard category or by listing the hazardous components.

**78. Under Sections 311 and 312, when extremely hazardous substances are contained within a mixture, does a facility still have the option to report the mixture as a whole or by its hazardous components?**

Yes; the mixture may be reported as a whole or by its hazardous components.

**79. With regard to thresholds in mixtures, how is reporting under Sections 311 and 312 handled if a facility has a number of different mixtures on-site and each is under 10,000 pounds but the mixtures contains an aggregated quantity of an extremely hazardous substance (EHS) that exceeds its reporting threshold?**

If extremely hazardous substances are hazardous components of a mixture, the quantity of the extremely hazardous substance in each mixture shall be aggregated to determine if the threshold value has been reached for the facility. Reporting may be accomplished by reporting on the component or the mixture even if the amount of the mixture(s) is below the reporting threshold.

**80. Are there any exemptions under Title III for Sections 311 and 312?**

There are five exemptions under Sections 311 and 312. These exemptions are:

i) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

ii) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

iii) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;

iv) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

v) Any substance to the extent it is used in routine agricultural operations or is fertilizer held for sale by a retailer to the ultimate customer.

There are also a number of exemptions under the OSHA Hazard Communication Standard which affect the requirement for preparing or having available an MSDS. These are listed in 29 CFR Section 1910.1200(b).

**81. Are research laboratories and medical facilities exempt from reporting under Sections 311 and 312?**

Research laboratories and medical facilities are not exempt from reporting requirements under Sections 311 and 312, rather, Section 311(c)(4) of Title III excludes from the definition of *hazardous chemical*: "Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual." The exclusion applies to research laboratories as well as quality control laboratory operations located within manufacturing facilities. Laboratories that produce chemical specialty products or full-scale pilot plant operations are considered to be part of the manufacturing facility and therefore would not be a "research laboratory."

With respect to hospitals or medical facilities, the exemption applies only to hazardous chemicals that are used at the facility for medical purposes under the

supervision of a "technically qualified individual." Veterinary facilities are included.

**82. A pharmaceutical research lab contains a pilot plant as part of its overall operation. The products manufactured in the pilot plant are not sold, but are distributed to hospitals and other health care facilities for use in continued clinical testing. Is the pilot plant exempt or must it report its hazardous chemicals under Sections 311 and 312?**

In this case, because the pilot plant operation does not manufacture products for sale, the hazardous chemicals would be exempt. The primary function of the plant is research and testing.

**83. Is a facility that manufactures household products exempt from reporting under Sections 311 and 312 due to the household products exemption in Title III?**

Section 311(e) exempts from the definition of "hazardous chemical" any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public. This exclusion applies to household or consumer products, either in use by the general public or in commercial or industrial use when the product has the same form and concentration as that intended for use by the public. It also applies to these products when they are in the same form and concentration prior to distribution to the consumer, even when the substance is not intended for use by the general public. The term "form" refers to the packaging, rather than the physical state of the substance. However, the manufacturer is exempt from reporting the manufactured product only when the product is in the final consumer form. The manufacturer is not exempt from reporting the raw or processing materials.

**84. A facility purchases sheets of metal in order to manufacture its final product. A MSDS is received with this order. Must this be reported under Sections 311 or 312?**

OSHA's Hazard Communication Standard (HCS) exempts from the definition of "hazardous chemical" those substances such as "articles" which are manufactured items:

- Formed to a specific shape or design during manufacturing,
- Which have an end use function dependent upon that shape or design,
- To the extent they do not release or otherwise result in exposure to a hazardous chemical under normal conditions of use (see 29 CFR 1910.1200(b)).

However, if the sheet metal's use has the potential to expose downstream employees in a different facility to a hazardous chemical, the manufacturer must prepare or have available an MSDS for that item, even if the manufacturer's own

use of the item in its own facility does not have the potential to expose it's own employees to hazardous chemicals. Therefore, primary and secondary metalforming operations are not exempt from OSHA's HCS.

Section 311(e)(2) exempts, "any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use." EPA interprets this exemption for solids to be broader than OSHA's exemption for "articles". Under Sections 311 and 312, hazardous chemicals at the worksite are reported to state and local government officials and the information is made available to the public. The purposes of Sections 311 and 312 reporting are to inform the local community of the presence of chemicals that could potentially cause a release and thus, merit public concern. Considering this purpose, EPA does not believe that Congress intended local communities to be notified of the presence of hazardous chemicals that raise no potential for release as they are used in that particular community.

Therefore, facilities performing traditional metalforming operations should be exempt from Section 311 and 312 reporting requirements because within these facilities the use of sheet metal does not cause a release of, or otherwise result in exposure to, a hazardous chemical within the sheet metal. The sheet metal used at these facilities would be exempt from Sections 311 and 312 reporting requirements whether or not they are required to prepare or have available an MSDS under the HCS.

Facilities that perform secondary operations would not be exempt from Sections 311 and 312 reporting requirements. Within these facilities, the use of sheet metal may cause a release of, or otherwise result in exposure to, a hazardous chemical. This potential for exposure renders the sheet metal used at these facilities ineligible for Section 311(e)(2)'s exemption from Sections 311 and 312 reporting requirements.

**85. Pipelines and similar transport systems have been included in the recent OSHA expansion (FR August 24, 1987). Must the "storage" materials in these facilities be reported under Sections 311 or 312?**

Materials in pipelines are included in the general exemption for substances in transportation from all requirements under Title III except Section 304 release reporting. Therefore, despite the new coverage of these facilities under OSHA, the materials in pipelines are not subject to Sections 311 and 312.

**86. A transportation firm owns a pipeline that transports oil to an intermediate storage tank at their pumping station. At the pumping station the oil is sold and sent by a secondary pipeline to the purchaser. The transportation firm also owns the secondary pipeline until the pipeline reaches a valve in front of a purchaser's tank.**

**The transportation firm sends 10,000 gallons of oil to the intermediate storage tank. Of this oil, 5,000 gallons are purchased by company A, so the transportation firm then directs the 5,000 gallons into the pipeline leading to company A. Is the oil stored in the intermediate storage tank exempt from Sections 311 and 312 reporting under Section 327 transportation exemption?**

Section 327 of SARA Title III exempts from any Title III reporting requirement, other than the Section 304 notification obligation, substances or chemicals in transportation or being stored incident to transportation, including the transportation and distribution of natural gas. In a final rule promulgated April 22, 1987 (52 FR 13378) the Agency interpreted this provision to exempt from Title III reporting the transportation of substances in pipelines. The Agency stated, "Title III does not apply to the transportation of any substance or chemical, including transportation by pipeline, except as provided in Section 304."

As Title III does not itself define "pipeline," the Agency will refer to the definition found in regulations implementing the Hazardous Materials Transportation Act (HMTA) and promulgated by the Department of Transportation. EPA believes the HMTA to be appropriate as a reference because of Congress' explicit reference to that Act in the legislative history referring to the Section 327 transportation exemption. In the Conference Report, Congress stated that limiting the exemption for storage incident to transportation to those chemicals under active shipping papers was consistent with the HMTA.

Department of Transportation regulations implementing the HMTA define "pipeline" as "all parts of a pipeline facility through which a hazardous liquid moves in transportation, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks." (49 CFR 195.2) "Breakout tanks" in turn, are defined under these same regulations as "a tank used to (a) relieve surges in a hazardous liquid pipeline system or (b) receive and store hazardous liquid transported by pipeline for reinjection and continued transportation by pipeline."

Because the intermediate storage tank owned by the transportation firm described above receives and stores hazardous liquid transported by pipeline for reinjection and continued transportation by pipeline, it meets this definition of "breakout tank" included within the Department of Transportation definition of "pipeline." Therefore, EPA would interpret that the oil contained in such an intermediate tank would be exempt from reporting under the Section 327 transportation exemption.

**87. Under Sections 311 and 312, must a farmer report the fertilizers, pesticides, and other chemical substances he uses to protect his crops?**

Farming operations that include a manufacturing facility (within Standard Industrial Classification (SIC) Codes 20-39) presently are subject to Sections 311 and 312. In additions, farming facilities not within these SIC codes but covered under the new OSHA expansion (FR August 24, 1987) generally are covered by Sections 311 and 312 as of June 24, 1988. As such, they should have complied with Section 311 MSDS or list requirements by September 24, 1988, and with Section 312 inventory reporting by March 1, 1989.

Even if a farming operation is covered under Sections 311 and 312, many of the substances may still be exempt from most reporting requirements. Under Section 311(e)(5), any substance--when used in routine agricultural operations—is exempt from reporting under Sections 311 and 312. This exemption is designed to eliminate the reporting of fertilizers, pesticides, and other chemicals substances when stored, applied, or otherwise used at the farm facility as part of routine agricultural activities. This exemption would also include the use of gasoline and diesel to run farm machinery and also paint to maintain equipment. Thus, the storage and use of a pesticide or fertilizer on a farm would be considered the use of a chemical in a routine agricultural operations and is, therefore; exempt under Sections 311 and 312.

**88. Would a farm supplier or retail distributor be excluded from Sections 311 and 312 reporting based on the agricultural exemptions?**

Under Section 311(e)(5), retailers are exempted from the reporting requirements for fertilizers only. Therefore, substances sold as fertilizers would not need to be reported under Sections 311 and 312 by retail sellers. However, other agricultural chemicals, such as pesticides, would have to be reported by retailers and suppliers of such chemicals.

**89. How are the activities of "farm cooperatives" interpreted for reporting purposes?**

Farm cooperatives would be subject to Sections 311 and 312 reporting requirements.

**90. How are farms with ten or fewer employees covered under Sections 311 and 312 of Title III?**

Sections 311 and 312 apply to any facility covered by the OSHA Hazard Communication Standard (HCS). On August 24, 1987, OSHA revised its HCS (52 FR 31852) to expand the scope of the industries covered by the rule from the manufacturing sector (in Standard Industrial Classification (SIC) codes 20-39) to all industries where employees are exposed to hazardous chemicals (SIC codes 1-89). However, this expansion would not include farms with ten or fewer employees. This is due to a recent Congressional "rider" to OSHA's

Appropriations Bill which prevents OSHA from promulgating and enforcing regulations for farms with ten or fewer employees. Therefore, since farms with ten or fewer employees are not covered by OSHA, they would not be covered under Sections 311 and 312.

**91. An animal refuge sprays herbicides and pesticides on its grounds to better the quality of the area for the animal inhabitants. Is the spraying of these pesticides exempt from the requirements of Sections 311 and 312 of Title II under the exception to the definition of "hazardous chemical" for "any substance to the extent it is used in routine agricultural operations?"**

The exemption for routine agricultural use under Sections 311 and 312 is designed to eliminate the reporting of many of the chemicals routinely used by farmers. The animal refuge is not spraying the chemicals for the production of food crops and the refuge is not in the food crop production business. Therefore, the refuge's spraying of herbicides and pesticides would not be considered routine agricultural operations and thus, not exempt from Sections 311 and 312 reporting.

**92. Tobacco and tobacco products are exempt from reporting under Sections 311 and 312. Does this mean that nicotine extracted from the tobacco is also exempt?**

No. Current OSHA regulations exempt tobacco or tobacco products under the definition of a hazardous chemical. Since Sections 311 and 312 incorporate this definition of hazardous chemicals, this exemption applies only to the tobacco and tobacco products. However, nicotine, when extracted from the tobacco, is not exempt because it is not a tobacco product.

**93. Are mining facilities required to notify under Sections 311 and 312?**

Mining facilities regulated by the Mining Safety and Health Administration, (MSHA) are not subject to OSHA's Hazard Communication Standard (HCS) and, therefore, are not subject to the Sections 311 and 312 requirements. However, it should be noted that because MSHA covers only actual mining activities, all other operations, such as refining, are covered under OSHA's HCS and are thus subject to Sections 311 and 312.

**94. Are petroleum products exempt from the reporting requirements of Sections 311 and 312?**

Petroleum products are not specifically exempted from Sections 311 or 312 reporting. However, some products could fall under the exemptions listed in Section 311(e).

**95. Is household heating fuel exempt from the Sections 311 and 312 requirements?**

Section 311(e)(3) exempts, "any substance to the extent it is used for personal, family or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public." This

household product exemption does not apply to the use of household heating oil at business building for heating purposes. This exemption was intended by Congress and EPA to apply to packaged products as opposed to substances transported in bulk, that are distributed to the general public in a form with which the general public is familiar. EPA stated in the preamble to the final regulations, "Thus a substance may be packaged in small containers when distributed as a household product but transported or stored in bulk quantities when used for other purposes. Even though in the same concentration as the household product, a substance may pose much greater hazards when present in significantly larger quantities. In addition, while the general public may be familiar with the hazards posed by small packages of hazardous materials, they may not be as aware of the hazards posed by or likely location of the same substances when transported or stored in bulk" 52 FR 38344,38348 (October 15, 1987).

Fuel oil used for heating business buildings is not transported or distributed in small containers. Rather, the heating oil is transported in bulk by truck and dispensed into storage tanks at the business address. Just as the heating oil is not "packaged "when being transported in bulk by truck, it is not "packaged" when dispensed into a storage tank at the business site. Although heating oil is present in the same concentration and used for the same purposes at both a household and a business, only fuel oil used at a household would be exempt and only under the first clause of the exemption ("any substance to the extent it is used for personal, family or household purposes"). Therefore, heating oil used at business buildings is not exempt from Sections 311 and 312 reporting requirements.

**96. Considering the OSHA expansion to the non-manufacturing sector, are State facilities required to meet the notification requirements of Sections 311 and 312 of Title III?**

No. Sections 311 and 312 apply to owners and operators of facilities who must prepare or have available an MSDS under the Occupational Health and Safety Act of 1970 (OSHA) and its implementing regulations. OSHA does not apply to State governments. (OSHA applies to "employers" and States are specifically excluded from the definition of "employers.") Although States may choose to administer their own occupational safety program in lieu of the Federal government's OSHA program, such a program must be administered exclusively under State law. Furthermore, unlike State-administered programs under some environmental statutes (e.g., RCRA), the State standards do not become Federal standards once the State plan is approved by the Occupational Health and Safety Administration. Thus Sections 311 and 312 do not apply to State facilities because OSHA and its implementing regulations do not apply to State facilities.

## PREEMPTION
## (Sections 311 and 312)

**97. What effect will Sections 311 and 312 requirements have on existing State and local "Right-to-Know" programs?**

Title III does not pre-empt existing State or local laws. Sections 311 and 312 requirements establish "ground rules" for submitting information about the presence of hazardous chemicals in the community. Where existing "Right-to-Know" laws are in place, officials should examine their programs to see if their requirements conform to those established under Title III. Some key factors to consider are:

- What kind of information is required?
- What chemicals are covered?
- What facilities are covered?
- Is information publicly available?
- What are the reporting periods and frequency of reports?
- Under what conditions can trade secret protection be granted?

Existing Right-to-Know programs that meet (or exceed) the basic requirements of Title III will satisfy Sections 311 and 312 reporting requirements. To avoid duplicate reporting forms, State and local governments may use their own forms, but such forms must, at a minimum, include the content of the published uniform federal format.

**98. A chemical company has one operation in a foreign country and an identical operation in the U.S. For one chemical, they wish to file trade secrecy claim under Sections 311, 312, and 313. With regard to public disclosure, all non-government entities in the foreign country are bound by a confidentiality agreement regarding this chemical's identity and usage. However, there is no confidentiality agreement with the foreign government because the foreign government's laws have a statutory guarantee of confidentiality for all foreign business interests. Does this lack of a tangible confidentiality agreement with the foreign government constitute public disclosure? How is this reported on the substantiation form?**

The fact that there is no tangible piece of paper stating "confidentiality agreement," is not dispositive. The statutory guarantee of confidentiality serves as an agreement of confidentiality. Therefore, Question 3.2 on the Substantiation Form asking about disclosure may be checked "No."

**99. A facility was not aware that all confidential business information (CBI) could be deleted from a sanitized trade secret substantiation. As a result, when they filed using the proposed trade secret substantiation form, they only deleted the chemical identity and did not delete the CBI from the sanitized substantiation. Since all proposed Substantiation Form submissions must be updated to reflect changes made in the final form, the facility can delete all CBI from the final sanitized Substantiation Form. Can the facility find out if anyone has requested their proposed sanitized Substantiation Form? Also, can the facility retrieve their proposed rule sanitized substantiation to prevent disclosure of their CBI?**

All trade secret claims have been isolated and protected from disclosure. As soon as the updated trade secret claim is received, the proposed Substantiation Form may be returned to the submitter upon request. Sanitized substantiations, are and have been generally available to the public, and the Agency does not have a record of who has viewed particular submissions. Therefore, it is not possible to definitely state that a particular sanitized substantiation form has or has not been viewed by a member of the public. Since sanitized substantiations were also sent to the appropriate State authority, the facility must check with the individual State on their procedures regarding updated claims and previously submitted sanitized substantiations.

**100. A chemical company in Louisiana filed their Sections 311 and 312 reports by hazardous components. The Louisiana State Right-to-Know laws require companies to report on all unique substances present at the facility. For example, if chemical A and chemical B are blended to make mixture C, then the facility would have to report on chemical A, chemical B and mixture C containing A and B. The facility has no problem reporting on the chemicals present on site because they stock a large number of chemicals and their competitors would never be able to figure out their mixture compositions from all these possible chemicals. However, Louisiana requires the company to report on mixture C and the chemicals in it —i.e., chemicals A and B. The facility does not want to reveal what chemicals are present in what mixtures. How does this facility file a trade secret claim?**

Federal requirements for Sections 311 and 312 reporting state that a facility may report on the mixture as a whole (mixture C) or on the mixture's hazardous components individually (i.e., chemicals A and B). It does not require that a facility do both. However, the State of Louisiana is requiring information above and beyond the Federal requirements in that it is requiring identification of both mixture C as a whole, and on the chemicals A and B present in that mixture. The company must comply with both State and Federal reporting requirements. Since Federal reporting requirements do not require that the chemical components , A and B, and the name of the mixture C be identified, no trade secrecy claim needs to be made under Federal law. These components must be identified under State law, however, and if the company wishes to protect the chemical composition of mixture C as trade secret, it must do so under Louisiana State law. A copy of the State trade secrecy claim does not need to be sent to EPA.

**101. A facility is composed of two (2) separate establishments and is filing a separate Form R for Section 313 reporting for each establishment. For Part I Section 3.5, what Standard Industrial Classification (SIC) codes are to be listed by each establishment?**

The SIC code(s) of the establishment(s) whose data is included in each Form R are the only one(s) needed to be entered in Part I Section 3.5 of Form R. The other SIC code(s) for the other establishment(s) of the facility would be included in their own Form R submittal.

**102. To file the toxic chemical release report for Section 313, how would a compound that falls into two reporting categories be reported (i.e, PbCr03)?**

A compound that has constituents in two toxic categories would have to be included under both categories when submitting a toxic chemical release reporting form. In the example indicated, the total weight of PbCr03 must be included in determining the threshold for both lead and its compounds and in determining the threshold for chromium and its compounds. In reporting the releases of lead, only the stoichiometric weight of the lead released in PbCr03 would be included. Likewise, only the chromium in PbCr03 that is releases would be included in the Section 313 reporting form.

**103. Sodium hydroxide is listed as a toxic chemical with a qualifier of "solution" A facility has sodium hydroxide in the solid form. At one point in their process, the facility heats up the sodium hydroxide to 900°F. At this point, the sodium hydroxide turns into the molten state. Is the liquid molten sodium hydroxide considered to be a "solution" for the purposes of Section 313 of Title III?**

Sodium hydroxide solution is essentially a mixture of sodium hydroxide dissolved in a liquid. The molten sodium hydroxide in its pure form would not meet this requirement; therefore, the molten sodium hydroxide would not be considered a sodium hydroxide solution.

**104. A facility has determined that it needs to report under Section 313 for both elemental lead as well as lead compounds. Can this facility file one EPA Form R that takes into account both the releases of lead and lead compounds or are they required to report separately?**

According to EPA, if a subject facility exceeds thresholds for both the parent metal and compounds of that same metal, it is allowed to file one joint report (e.g., one report for lead compounds and elemental lead). EPA allows this because the release information reported in connection with metal compounds will be the total pounds of the parent metal released.

**105. Are castings, which contain nickel, exempt from reporting on the Toxic Chemical Release Reporting Form under Section 313?**

The final rule for Section 313 (53 FR 4528) contains an exemption for toxic chemicals present in articles. An article is defined as "a manufactured item": (i) which is formed to a specific shape or design during manufacturing; (ii) which has end use functions dependent in whole or in part upon its shape or design during end use; and (iii) which does not release a toxic chemical under normal conditions of processing or use of that item at the facility (emphasis added). An item will not qualify as an article if there is a release of a toxic chemical from the normal use or processing of that item. If under normal conditions of processing or use, the metal casting is ground or cut in a way that would release nickel, a listed toxic chemical, it would not qualify for the article exemption. Therefore, releases would have to be reported if the amount of nickel processed or used in this way exceeded the appropriate reporting threshold. In addition, the exemption for toxic chemicals in articles applies only to the processing or use of the article. The person producing the article would be required to report toxic chemicals manufactured, processed, or otherwise used to produce the article.

**106. If a manufacturer of transportation equipment (airplanes) is required to report a Form R for Section 313 for their uses of benzene as a component in jet fuel, must the facility include emissions of this benzene when the jet fuel is used to power the equipment in an off-site test run?**

The facility would not have to include these emissions of benzene which is consistent with the laboratory use exemption under 40 CFR 372.38(d). The usage of benzene in this manner would be considered as being used for product testing, therefore, emissions due to this product testing would not need to be reported under Section 313.

**107. A single company owns many facilities which are required to report under Section 313. The company stores gasoline at one of the facilities. The gas is used by trucks from all of the facilities, which come to the central location for fuel and then leave. Is the gas in the storage tank exempt because it is used to maintain motor vehicles even though they are operated from different facilities?**

Since those trucks are being driven to the one facility site to be fueled, they can be considered as being operated by that one facility. Therefore, the gasoline stored and used by that one facility would be exempt from being reported as long as the toxic chemical is used to maintain a motor vehicle operated by the facility as per 40 CFR Part 372.38(c)(4).

**108. A facility has a PCB transformer on site which they use for energy. During the calendar year 1987, the PCB was removed from the transformer and disposed of. Is the amount of PCB removed for disposal used to determine if the threshold has been met and for release reporting purposes?**

If the facility removes the entire transformer including the PCB laced oil as an article, the amount of PCB in the article would not be included in Section 313 threshold and release reporting. According to 40 CFR Part 372.28(b), if a toxic chemical is present in an article at a covered facility, a person is not required to consider the quantity of the toxic chemical present in such article when determining whether an applicable threshold has been met or determining the amount to be reported as a release.

If the facility removes the PCB laced oil from the transformer, this removal would negate the article exemption. To determine if the facility exceeds a threshold, the operator of the facility shall count the amount of the chemical added to the recycle/reuse operating during the calendar year (40 CFR Part 372.25(e)).

If a facility has a transformer leaking the PCB laced oil, this leaking would also negate the article exemption. To determine if the facility exceeds a threshold, again, the owner or operator of the facility shall count the amount of the chemical added to the recycle/reuse operation during the calendar year.

The facility would be "otherwise using" the PCB added to the transformer (ancillary use). Only the amount of PCB added to the transformer needs to be aggregated for threshold determination, and the facility will most likely not be adding PCB laced oil to the transformer. Therefore, it is unlikely that the facility will exceed the 10,000 pound "otherwise use" threshold. The facility, therefore, would not be required to report releases of the PCBs for Section 313.

If however, the facility exceeds the 10,000 pound threshold and needs to report PCBs, the PCBs removed from the transformer and sent off-site for final disposal would be a reportable release.

**109. A manufacturing facility removes PCB-laced oil that was contained in its on-site transformers. Would this activity be considered a process or an otherwise use of the PCB, a listed toxic chemical if the facility only extracts the PCB to dispose of it off-site?**

If the PCB laced oil is removed from an on-site transformer for disposal and is not replaced with clean PCB laced oil, this would not be considered a process or an otherwise use. Removal of a toxic chemical from an article for disposal does not constitute a process or otherwise use activity. Therefore, this activity would not be subject to threshold determination and release reporting under SARA Section 313.

**110. Section 313 of Title III requires covered facilities to submit information on their releases of certain toxic chemicals. The information is provided on EPA Form R. Section 8 of Form R is presently an optional section on waste minimization. If a facility chooses to fill out Section 8, they must provide information about their waste minimization including the type of modification. How should they indicate this on the form if they have more than one type of modification?**

The Form R only allows facilities to report one code for the type of waste minimization. Since there is only room for one code type relating to the type of modification, the facility should enter a code for the most prevalent type of modification for the chemical that the facility is reporting.

**111. Will titanium dioxide submissions for Form R, that were submitted prior to the June 20, 1988 delisting of this toxic chemical, be entered into the public database?**

All Form R's received at the Title III Reporting Center will be entered into the database. This would include any titanium dioxide submissions received despite the June 20th delisting of this chemical.

**112. Under Section 313 a facility is required to provide the supplier notification (40 CFR Section 372.45). The product contains nitric acid, a listed toxic chemical. However, the concentration of nitric acid in the product varies from batch to batch. Can this facility give a range for the nitric acid concentration in this product in order to fulfill its supplier notification requirement?**

According to the current language in the regulation (40 CFR Section 372.34(c)(3)), every time a concentration of a toxic chemical in a mixture changes, the supplier is to provide an updated notification with the new concentration. Therefore, this facility cannot provide a range of concentration value in order to fulfill the notification requirement. Instead, the facility must provide a new notification with each product that has a different concentration of a listed toxic chemical.

**113. A facility is required to provide the Section 313 supplier notification (40 CFR Section 372.45) for some of its products which contain listed toxic chemical(s). The products contain antimony compounds, a listed toxic chemical category. However, the facility considers the chemical names of the antimony compounds in their products a trade secret. Does this facility have to give the exact chemical names of these antimony compounds in order to fulfill the supplier notification requirements?**

This facility's antimony compounds are not specifically listed in the Section 313 toxic chemicals list, however, they do fall into the antimony compounds category. Since the specific names of the toxic chemicals are not listed, the facility does not need to give each chemical name to fulfill the supplier notification requirement. This facility needs to identify that the products contain an antimony compound subject to Section 313 and indicate, the concentration of the compound in the

mixture so that their customers can make their threshold determination. The facility should also indicate the stoichiometric amount of antimony in the compound to aid their customers in calculating releases.

**114. Can the information required in Form R be used for criminal prosecution of the submitters of that information?**

- The Title III law contains no reference which states that the information cannot be used for this purpose. Therefore, unless there is some other law which takes precedence in this case, the Form R information may be used for this purpose.

**115. The enforcement requirements of Title III (Section 325), state that the civil and administrative penalties for Section 313 non-compliance shall not exceed $25,000 for each violation. Is a non-compliance violation determined on a per facility or per toxic chemical basis? Also is that penalty assessed on a per-day basis?**

Section 325(c)(i) states that "any person who violates any requirement of Section 313 shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each violation." Also, Section 325(c)(3) states "each day a violation continues shall, for the purposes of this subsection, constitute a separate violation" (emphasis added). The requirements of Section 313 are that the owner or operator of a covered facility must submit a Form R for each toxic chemical that exceeds a specified threshold. Therefore, the facility can be assessed a penalty for each Form R not submitted or for submitting a Form R that is not in compliance with the rules promulgated under Section 313 (40 CFR Part 372). The penalty can be assessed on a per-day basis.

**EPA has prepared an additional Toxic Release Inventory Questions and Answers document which can be obtained by writing:**

The Emergency Planning and Community
Right-to-Know Document Distribution Center
P.O. Box 12505
Cincinnati, OH 45212
Document # EPA 560/4-89-002

## HOW THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT AFFECTS VARIOUS TYPES OF FACILITIES

**116. Are farmers subject to Title III? If so, why? What exactly do farmers have to do?**

There are four major reporting requirements under Title III: emergency planning notification (Section 302), emergency release notification (Section 304), community right-to-know (Section 311 material safety data sheets and Section 312 emergency and hazardous chemical inventory forms) and toxic chemical release forms (Section 313 "emissions inventory"). Each reporting provision has different requirements for chemicals and facilities covered. Due to this complexity in the statute itself, each Section must be read carefully to understand the chemicals covered and the facilities to which the Section applies. Farmers may be subject to several of the reporting requirements of Title III.

- **Emergency Planning Notification (Section 302)**

Farm owners and operators are most likely to be subject to the emergency planning requirements of Section 302. Farms were not exempted from this provision, since the law was designed to generally identify all facilities that have any of the listed 366 extremely hazardous substances present in excess of its threshold planning quantity (TPQ). The TPQ is based on the amount of any one of these substances which could, upon release, present human health hazards which warrant emergency planning. The TPQ emergency planning trigger is based on these public health concerns rather than the type of facility where the chemicals might be located. The type of facility and degree of hazard presented at any particular site, however, are relevant factors for consideration by the local emergency planning committees.

For many farms, chemicals in these quantities may not present a significant hazard to their communities due to their rural location or short holding times, other farms may well present a potentially significant hazard if the chemicals are located in a suburban, populated area or near a school, hospital, or nursing home. Even in a rural area, large volume storage could be a concern. Although these substances may only be stored or used periodically, there is always the possibility of accidents which could present a hazard to the community. Finally, in the event of a fire or other emergency on the farm, local responders should know what chemicals they might encounter in order to take appropriate precautionary measures. The hazards posed by an individual farm or ranch must be evaluated on a site-specific basis. Communities must know which facilities may present a potential for chemical releases so they can determine the nature of the risk to the public and to emergency responders in the event of a

release. Title III established State and local planning organizations and notification requirements to meet these needs. Local emergency planning committees can best address these concerns by working with farm representatives.

To meet the emergency planning requirements of Title III, farm owners and operators must determine if they have any of the listed 366 substances in excess of the threshold planning quantity (TPQ) present on their farms at any one time in concentrations greater than one percent by weight. This requirement applies even if the chemicals are present for only a short period of time before use. There is no exemption to this requirement for farms or for substances used in routine agricultural operations.

If any of the 366 substances is present in excess of its TPQ, simply notify (preferably in writing) the State emergency response commission (SERC) and the local emergency planning committee. The notification need not include the names and quantities of identified substances, but EPA encourages the inclusion of such information because it will be useful to the SERC and the local committees in organizing and setting priorities for emergency planning activities. This notification was required by May 17, 1987 or 60 days after the TPQ is exceeded for at least one extremely hazardous substance, whichever is later. If such notification has not been made, farm owners and operators should do so immediately.

This is a one-time notification. Once made, owners or operators are not required to notify the SERC further of other extremely hazardous substances that may become present on the farm; however, they may be required to inform the local emergency planning committee of such changes.

EPA may revise the list of extremely hazardous substances. A facility which has any substances added to the list but which was not previously required to notify must notify its SERC and local emergency planning committee within 60 days. EPA does not have immediate plans to add substances to this list.

Farmers required to notify under Section 302 must designate representatives to work with the local emergency planning committee to address any need for emergency planning involving their farms. Local emergency planning committees were to be established by the SERC by August 17, 1987.

There is no requirement for farm owners or operators to develop a farm emergency plan. A comprehensive emergency response plan is to be developed by the local emergency planning committee for the local emergency planning district it covers. This plan should address, to the extent possible, all potential chemical release hazards in the district including, where appropriate, chemicals on farms.

- **Emergency Release Notification (Section 304)**

Farmers may also be subject to emergency release notification requirements (Section 304) if they release any of the 366 listed extremely hazardous substances or Superfund hazardous substances in excess of its reportable quantity (RQ). Reportable quantities are the amounts of these substances which, if released, must be reported. (RQs for Superfund hazardous substances are specified in EPA regulations found in 40 CFR Table 302.4. The CFR is available in public libraries and EPA Regional Offices). Section 304 requires reporting of such releases to SERC and local emergency planning committees. Reporting of releases of Superfund hazardous substances to the National Response Center (1-800-424-8802) has been required since 1980. Section 304 also requires a written follow-up emergency notice to the SERC and local emergency planning committee.

Exempted from reporting are pesticides registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) when used generally in accordance with its intended purpose. Also, normal application of fertilizer would not need to be reported. However, an accidental release of such substances (or other release not generally in accord with its intended purpose) in excess of the RQ must be reported.

Title III emergency release notification (Section 304) has two limitations which are not present in Superfund release reporting. First, Title III (Section 304) release reporting applies only to facilities which produce, use, or store a "hazardous chemical." Because the definition of "hazardous chemical" in Title III specifically excludes substances used in routine agricultural operations and household or consumer products, some farms or ranches will not be subject to Section 304. Secondly, releases reportable under Section 304 will include only those releases which have potential for off-site exposure and which equal or exceed the applicable reportable quantity for that substance. Thus, spills of pesticides which would require release reporting to the National Response Center under Superfund, would not be subject to local and State reporting under Section 304 unless there were a potential for off-site exposure.

- **Community Right-to-Know (Sections 311 and 312)**

Community right-to-know reporting (Sections 311 and 312) is limited to those facilities required to prepare or have available MSDSs under the Occupational Safety and Health Administration's Hazard Communication Standard (HCS).

Sections 311 and 312 became applicable beyond the manufacturing sector beginning September 24, 1988, as a result of the expansion of OSHA Hazard Communication Standard, but chemicals used in routine agricultural operations and households products will not be subject to these reporting requirements. Chemicals used for such purposes are excluded from the Title III definition of "hazardous chemical" to which the reporting requirement applies. In addition, farms with ten or less full-time employees are not covered by the HCS and, therefore, are not covered by Sections 311 and 312.

• **Toxic Chemical Release Forms (Section 313)**

Toxic chemical release reporting (Section 313) is limited to facilities in SIC codes 20-39 with 10 or more full time employees, and may apply to farms or ranches with on-site manufacturing operations.

• **Other Provisions**

Title III also includes various provisions for civil, administrative and criminal penalties and citizen suits for failure to comply with the requirements of the law.

For assistance in meeting these requirements, farmers may call on their State and county offices of the USDA Agricultural Stabilization and Conservation Service, which have the list of 366 chemicals, their TPQ's and RQs, and a list of SERCs. They may also call EPA's Emergency Planning and Community Right-to-Know Information Hotline at 1-800-535-0202.

**117. Are Federal facilities subject to Title III?**

Since Federal facilities were not included in the definition of person, EPA interprets Title III to exempt Federal facilities from the Title III provisions. However, Federal facilities are being encouraged to comply with all Title III provisions. Through the National Response Team and contacts with other Federal agencies, Federal facilities have indicated that they intend to comply with the Title III requirements except in cases of national security interests.

**118. Does a contractor for a Federal government facility need to comply with the Title III requirement?**

Yes. Federal government facilities are exempt from reporting due to omission of Federal facilities from the definition of "person" in the Title III statute. Thus, the definition excludes the federal government from being covered by the Title III provisions. However, the definition does include any other individual or private firm even if he or she is working under a contract for a Federal agency. Therefore, all government-owned, contractor-operated facilities are required to comply with any requirements that they may be subject to under Title III of SARA.

**119. The term "government corporation" appears in the Title III definition of "person" (Section 329). How should this term be defined and, considering Federal facilities are exempt under Title III, does this term include Federal government corporations?**

In general, a "government corporation" refers to a corporation established and organized by a governmental unit and which is owned or controlled by a governmental unit. Government corporations include State, local and Federal corporations and are likely to be listed in the legal code of the relevant governmental entity. For purposes of Federal government corporations, Congress has defined the term "government corporation" in 31 U.S.C. Section 9109. Under

this provision, a Federal government corporation refers to a "mixed-ownership government corporation" and a "wholly owned government corporation." Section 9109 goes on to list the Federal government corporations that meet this definition (e.g., Amtrak, FDIC, Export-Import Bank, Commodity Credit Corporation, etc.)

As to the second part of the question, whether the sovereign immunity of the U.S. government extends to Federal government corporations in the Title III context, the answer is generally no, as Congress has not accorded government corporations the same immunity that the United States itself possesses. That is, Federal government corporations are usually invested with the power "to sue and be sued." The U.S. Supreme Court has read this language to mean that Congress waived sovereign immunity for the government corporation. While courts have limited the sovereign waiver resulting from the "sue and be sued" language in specific contexts, the express inclusion of government corporations within the Title III definition of "person" makes it unlikely that Congress intended to relieve Federal government corporations of the obligation to comply with the Act. Thus, Federal government corporations as defined in 31 U.S.C. Section 9109 are subject to the requirements of Title III.

**120. Are landfills covered under Title III of SARA since they are covered by Resource Conservation and Recovery Act (RCRA)?**

Subtitle A of Title III is intended to identify facilities which present a potential hazard for a chemical emergency and to provide a process for local emergency planning committees to work with such facilities in determining the significance of the release hazard and developing response plans to facilitate timely and appropriate response in the event of a chemical spill.

While EPA agrees that conditions at some facilities (including landfills) may not pose significant chemical hazards even though extremely hazardous substances are present in excess of the threshold planning quantity, in other such facilities conditions will exist which do present a significant hazard. Such assessments must be made on a site specific basis. EPA believes that leaving such decisions to the local emergency planning committees is consistent with the purpose of Subtitle A. Communities must know which facilities may present a potential for chemical emergencies so they can determine the nature of the risk to the public and to emergency response personnel.

It is recognized that RCRA regulations already address many of the goals of Subtitle A of Title III. However, it is important that the facility contingency plan and local coordination required by RCRA be coordinated with any new State and local planning structure or community planning process established under Title III. Full compliance with the RCRA requirements should minimize additional planning activities with local committees under Title III. Therefore, these requirements are not duplicative.

It should be noted that landfills *may* not be covered under the other sections of Title III. The placing of a container of an extremely hazardous substance into a landfill which has a federal permit for this chemical is exempt from the Section

304 emergency release notification. Also under Subtitle B, Sections 311 and 312, most substances at landfills would be exempt due to the exemption for any hazardous waste such as defined by the Solid Waste Disposal Act under the OSHA Hazard Communication Standard (only hazardous chemicals for which a MSDS must be prepared or available under the OSHA Hazard Communication Standard must be reported under Sections 311 and 312). In addition, landfills generally do not fall into the SIC codes 20-39 covered by the Section 313 Toxic Chemical Release reporting requirements (however, they may be covered if they have manufacturing operations on-site).

**121. How are the quantities of the extremely hazardous substances (EHS) to be calculated in determining whether landfills are subject to the Section 302 requirements?**

EPA recognizes the practical problems presented for landfills in whether they contain any EHSs in excess of the threshold planning quantities (TPQ). However, owners and operators of landfills may base their calculations on the one percent exclusion rule (see 40 CFR 355.30)(a)(1)), which says that if the total weight of an extremely hazardous substance is greater than one percent of the total weight of the landfill waste and equals or exceeds the TPQ for that substance, the landfill is subject to Section 302 notification requirements. If no EHS exceeds the level, the landfill is not subject to the emergency planning requirements under Title III unless designated by the Governor or SERC under Section 302(b)(2). A local emergency planning committee may, depending on assessment of the hazards posed by a particular facility, request participation of the facility in the Title III planning process. Even though many landfills may not be required to provide planning notification, the landfill owner or operator and the local emergency planning committee should work in cooperation to ensure that potential chemical emergencies are addressed.